THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.2496 of 2004

14th December 2006

Between:

Smt.K.Padmaja, W/o.Late Dr.K.Ratnakar, Working as Jr.Assistant, O/o.the Director of Health, Koti, Hyderabad, A.P. R/o.1-1-189/15, Vivek Nagar, Hyderabad.

...PETITIONER

AND

1. Director of Health Medical and Family Welfare, A.P. Koti, Hyderabad, A.P.

And one other.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.2496 of 2004

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal, Hyderabad ('the Tribunal' for brevity) dated 30.01.2004, whereby, the challenge to the proceedings dated 21.01.2004 was rejected by the Tribunal and the petitioner-applicant was directed to approach the concerned District Medical and Health Officer, Kurnool, so as to consider her request for compassionate appointment in the subordinate offices in Kurnool District or in any other district, as per her choice and as per the Rules, the present Writ Petition is filed.

Sri P.Keshava Rao, learned counsel for the petitioner, would submit that while several other candidates, on the basis of the orders issued by the second respondent in G.O.Ms.No.163 General Administration (1C) Department dated 22.04.1997, were given

appointment as Junior Assistants on compassionate grounds in the office of the first respondent and that other similarly situated persons, whose names are mentioned in para No.6 of the affidavit filed in support of the Writ Petition, have also been conferred certain benefits, the case of the petitioner was not similarly considered and the respondents had directed her to approach the District Authority. Learned counsel would submit that it is a clear case of discrimination and as such, the action of the respondents, in memo No.6073/J1/2003-3 Health, Medical and Family Welfare (J1) Department dated 01.10.2003, in directing the first respondent to forward her request to the Collector of the District concerned, so that she could be considered for subordinate service, is arbitrary, discriminatory and illegal.

Learned Government Pleader, while fairly conceding that the petitioner had raised such a plea in the application before the Tribunal, would submit that since the O.A. was disposed of at the admission stage, the respondents were denied the opportunity of meeting these contentions. I n ***L.Chandra Kumar v. Union of India***[1], the Supreme Court held that the Tribunal continues to

remain as the Court of first instance. While we find considerable force in the submission of Sri P.Keshava Rao that this plea of discrimination ought to have been examined by the Tribunal and the petitioner's request for being continued in the office of the first respondent should have been decided on merits, since the Tribunal has not considered this aspect, we deem it appropriate to remand the matter back to the Tribunal for its consideration afresh after giving the respondents an opportunity of being heard. Since the matter relates to appointment on compassionate grounds, we consider it appropriate that the O.A. be disposed of as expeditiously as possible in any event not later than three {3} months from the date of receipt of a copy of this order.

Learned counsel for the petitioner would submit that while there was an interim order during the pendency of the Writ Petition, whereby, the petitioner was continued in service, subsequently, the Writ Petition was dismissed for default and thereafter, on a petition being filed for restoration of the Writ Petition, this Court directed the Writ Petition to be restored to file. Learned counsel would submit that consequent upon the Writ Petition being restored, the interim

order passed earlier also stood restored and, as no orders were passed on the vacate stay application filed by the respondents, the petitioner ought to have been continued in service. Learned counsel for the petitioner would submit that contrary to the order of this Court, the petitioner has been discontinued from service. This fact is not disputed by the learned Government Pleader. We, therefore, consider it appropriate to direct the respondents, pending disposal of the O.A., to continue the petitioner in service.

The Writ Petition is accordingly allowed. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

14th December 2006
RRB

[1] AIR 1997 SC 1125